Supreme Court, U.S.
FILED

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No [redacted]

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2005

IRA R. BANKS,

PETITIONER,

V.

THE CHASE MANHATTAN BANK, AS TRUSTEE
OF IMC HOME EQUITY LOAN TRUST 1997-4
UNDER THE POOLING AND SERVICING
AGREEMENT DATED AS OF AUGUST 1, 1997
C/O FAIRBANK CAPITAL CORP.
ONE CONTIPARK, 338 SOUTH WARNMINSTER RD
HATBORO, PA 19040

RESPONDENT,

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

IRA R. BANKS
6507 NORTH 84TH STREET
MILWAUKEE, WI 53224
(414) NO.TN
PETITIONER OF RECORD

I

QUESTIONS PRESENTED

May a Real Estate Foreclosure Summary Judgement Motion on a residence mortgage be Affirmed by a State Court under the Federal Fair Debt Collection Practice Act,In first situation which involves (1) The United States Constitution Fourteenth Amendment, Equal Protection of Law, Due Process, (3) A Federal Trade Commission Class Action Suit Settlement Against this case plaintiff, An the petitioner-defendant in this case is a member of that suit,The Contents of suit is a decree determining the rights of all parties.(4) These circumstance,s is applicable in reviewing state court,s judgement under 28 USCS § 1257 (a),§1257 (1)(2)., Federal Statue 15 USCS 1601, 15 USCS 1692n. (5) Misconduct applicable to attorneys, Court Clerk,s in situations involvement SCR 20:1.2, SCR 62.02 ,

(6) The Civil Rights Act Under 42 U.S.C. 1981 is the federal law of the land,And it is Constitutional,Due Process requirement apply to licenses, Discretionary Acts,Judicial Court Judgement, Among the various leading cases cited herein this petition were argued and determined in the Court of appeals of wisconsin,the judicial judges involvement in the leading cases ,Their review of this case,The question raised is ,Whether the State Of Wisconsin Court Of Appeals panel of three (3).Wedemeyer,P. J. Fine JJ,Kessler,Benefit personally by finding attorney Jay J,Pitner State bar No.1010 -692, An attorney Michael M.Riley State bar No.1033997, In the panel order herein this petition the lawyers did not violate any laws ,SCR 62.02,SCR 20:1.2,Wis.Statue 802.10(3) ,Clerks,§806.06.When all persons need a license,And all need cases?.

III

LIST OF PARTIES

The parties of Milwaukee County Circuit Court record is the petitioner-Ira R.Banks And The respondent-The Chase Manhattan Bank as trustee of IMC Home Equity Loan Trust 1994 -4 under the pooling and servicing agreement dated as of august 1,1997 C/O Fairbank Capitol Corp.
One Contipark,338 South Warmonster Road
Hatboro, PA 19040

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No.04-0867

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2005

IRA R. BANKS,

PETITIONER,

V.

THE CHASE MANHATTAN BANK,AS TRUSTEE
OF IMC HOME EQUITY LOAN TRUST 1997-4
UNDER THE POOLING AND SERVICING
AGREEMENT DATED AS OF AUGUST 1,1997
C/O FAIRBANKS CAPITAL CORP.
ONE COUNTIPARK ,338 SOUTH WARNMINSTER
HARTBORO, PA 19040

RESPONDENT,

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

PETITIONER FOR WRIT OF CERTIORARI

Petitioner - Ira R.Banks for writ of certiorari for review the judgement of The

state of wisconsin three (3)panel court of appeal judgement affirmed the judgement of the lower circuit court for milwaukee county in favor of the plaintiff The Chase Manhattan Bank,this petition of Ira R.Banks filed with the state of wisconsin Supreme Court on the United States Constitutions Grounds was denied by State of Wisconsin Supreme Court on January 11,2005.

OPINIONS BELOW

The three panel court of appeals of the state of wisconsin in this case NO.04-0867 dated November 9,2004 ,"**Because there are no reasonable grounds to conclude that the trial court erred,we affirm**". (Appeals court order appendix page 3 paragraph 1).

Ira R.Banks-petitioner file with the state of appeals court several grounds for error,s

lower court method of applying procedure rules, such as discovery,sanction against petitioner but,on the other hand respondent violated the same discovery rule no sanction against that party, nun-uniformity of courts power to Constitutional rights,Due process rights, equal protection,Civil rights. Federal Statue truth-in-lending 15 USCS 1601,The Fair Debt Collection Practices Acts. For instance the Circuit Court For Milwaukee County granted a motion drafted by The Chase Manhattan Bank title order and judgement of foreclosure, motion for summary judgement,Their were two (2) File, both different in terms of dollar amounts claimed. a violation of the Fair Debt Collection Practices Acts 15 USCS 1692. Judicial Notice: The federal Trade Commission is in a different state litigating a class action suite against against Fairbanks Capitol Corp (respondent) On behalf of Ira R.Banks,

The class action suite reference can be reviewed at (state of wisconsin court of appeals case No.04-0867, reply brief of petitioner Ira R.Banks at exhibit 25-26),These deficiency,s are legal terms under law that require the state of wisconsin court system to protect it,s citizens from such wrongful doing ,The federal Trade Commission stated it,s case involves million of dollars national an the petitioner Ira R.Banks is a member of that class action suit. In absent of court records documenting the chase manhattan bank have standing in this matter ,the lower did a lot of gesting ,it is clear The Chase Manhattan Bank placed Fairbanks Capitol Corp in its caption of their complaint but, the difference is their is nothing on record that the two party had any thing to do with each other now or in the pass. Ira R.Banks raise his objection the respondent had no real interest in this case.

For this Supreme Court of the United States to apply law on the party of interest by the State of wisconsin Court of appeals analysis refer to appeal court own order here in this petition for writ at appendix B at page 10 paragraph 10-14.and Ira R.Banks-petitioner response to respondent-The Chase Manhattan Bank summons and complaint, Title defendant answer to complaint paragraph 1-7 (exhibit 2 ,record entries on 6-11-2003, appeal case no.04-0867).compare with the Federal Trade Commission national class action suit,This matter have several different business 15 U.S.C.S.§45,

JURISDICTION STATEMENT

Invoking Federal Jurisdiction under the United States Constitution of the fourteenth Amendment,Equal Protection Clause, Due Process Clause,The Civil Rights Acts,42 U.S.C 1981,15 U.S.C.S 1601,15 U.S.C.S 1692.

The Chase Manhattan Bank-respondent file suit against Ira R.Banks alleging default , claiming nun contract agreement on monthly payment on a loan on a mortgage.(record entries circuit court case No.03-CV-004400). Petitioner disputed those claims.Respondent file 5-14-2003.Ira R.Banks-petitioner also reminded the circuit court he to have a complaint in the same court before the same judge that is now pending against different party,s due to work related injuries. His case have been set aside by that court even though it was file first (2001-2003).Even if that court is addressing default, The State is responsible because Ira R.Banks complaint include default against separate parties an Presiding Judge Mel Flanagan had that case in her possession on the same day.The Chase Manhattan Bank claim default. Invoking the United States Constitutional Rights ..

summary judgement motion,On record are two (2) Different order and judgement of froe-closure case No.03-CV-004400,one for motion notice of motion and motion November 17,2003 (Appendix D here with this petition) And the second ,Appendix D here with this petition re-dated as PLEASE TAKE NOTICE THAT ON THE 5 day of january 2004, Where as,the same document is dated this 13th day of November, 2003,Gray & End ,L.L.P. Attorney for the plaintiff,Michael M.Riley, Also this court shall notice the records entries was tamper with by clerk,s .Their are three different records of entries case No.03-CV-004400 , **Civil Court Record,Dated 01-21-2004,with out a judgement of foreclosure,The other Civil Court Record,Dated 5-19-2005 12:30 pm ,with a judgement of foreclosure,**(case No.04-0867 reply brief ,exhibit 21,22,23,24, dated by appeals court of wisconsin July 22,2004).

Milwaukee county circuity court abandon it,s obligation,duty impose on that lower circuit court by law to hear petitioner Ira R.Banks summons and complaint due to injury,s he is suffering from,Ira R.Banks complaint cases have priority over the interest of the Chase Manhattan Bank,Again petitioner rights are violated under United States Constitution of the 14th Amendment,The lower courts have a duty under the constitution give rights to petitioner or protect person from state action,Duty to act.Obligation to take some action to prevent harm to another for failure of which there may or may not be liability in tort depending upon the circumstances , where as the presiding judge had those factor in it,s possession (Civil Court Record entries dated june 11,2003,case No.03-CV-004400, case No.04-0867 appendix exhibit 2,appeals).

EQUITY:Is a body of jurisdiction,as refere-ce to the Federal Class Action Suit file by The Federal Trade Commission in the state of Massachusetts in U.S District Court of be - half of Ira R.Banks an other members,Against Fairbanks Capitol Corp.(The respondent The Chase Manhattan Bank,As trustee) And Ira R. Banks complaint against different parties due to his injury,s.

The jurisdiction of this court to review the summary judgement order of circuit court ,State Of Wisconsin court of appeal Affirmed order dated November 9,2004.

The jurisdiction of this Court to review petitioner Ira R.Banks petition to review the State of Wisconsin Supreme Court order dated January 11,2005 Case No.04-0867 , petition denyed,Invoked under 28 U.S.C.1254 (1)(2), 28USC 1257 (1),15 USCS 1692n.

STATUES AND RULES INVOLVED

The Relevant Statues And Rules are as Follows:

STATUES:

28 U.S.C. 1254.(1)(2)

1254. **Courts of Appeals;Certiorari; Certified Questions**

Case in the court of appeals may be reviewed by The Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case.

(2). By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired.

28 U.S.C. 1257 (a)

1257 **State Courts; Certiorari**

(a) Final judgement or decrees rendered by the highest court of a State in which a decision could be had,may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statue of the United States Is drawn in question or where the validity of a statue of any state is drawn in question on the ground of it,s being repugnant to the Constitution,treaties, or laws of the United States,or where any title,right,privilege, or immunity is specially set up or claimed under the constitution.

Commerce And Trade

Federal Trade Commission

15 U.S.C.S.44 **Definitions**

Federal Trade Commission Statues

§44.The words in this section shall have the following meaning when found in this act.

Commerce: Means commerce among the several states or with foreign nations.Or in any territory of the United States Or The District of Columbia,or between any such territory and another.or between any territory and any State or territory or foreign nation. Corporation shall be deemed to include any any company,trust,So-called massachusetts trust,Or association incorporated or unincorporated,

15 U.S.C.S. 45 **Unfair Methods of Compensation Unlawful;Prevention by Commission**

§ 45 (a)

(a). **Declaration of Unlawful;Power to prohibit unfair practices; inapplicability to foreign trade**

(1) Unfair methods of compensation in or affecting commerce,and unfair or deceptive acts or practices in of affecting commerce,are unfair hereby declared unlawful.

15 U.S.C.S. 1601-1700

Consumer Credit Regulation

15 U.S.C.S 1692 **Congressional Finding and Declaration of Purpose**

§1692 (a)(b)(c)(d)(e).

(a) **Abusive practices.**There is abundant evidence of the use of abusive,deceptive, and unfair collection practices .

(b) **Inadequacy of laws.**Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) **Available non-abusive collection methods.**Means other than misrepresentation or other abusive debt collection practices are available for the effective collections of debts.

(d) **Interstate commerce.** Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of each commerce.

(e) **Purposes.**it is the purpose of this title (15 USCS §§ 1692 et seq.) to eliminate abusive debt collection practices by debt collectors,

§ 15 USCS 1692n

§1692n Relation to State Laws

This title (15USCS §§1692 et seq.) Does not annul,alter,or affect,or exempt any person subject to the provisions of this title (15 USCS §§ 1692 et seq.) From complying with the laws of ant practices,except to extent that those laws are inconsistent with ant provision of this title (51 USCS §§ 1692 et seq.) and then only to the extent of the inconsistency.For purposes of this section,a state law is not in - consistent with this title(15 USCS §§ 1692 et seq.).

UNITED STATES CONSTITUTION

United States Constitution 14th amendment

Fourteenth Amendment: All person or naturalized in the United States,and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.No state shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States:Nor shall any state deprive any person of law; nor deny to any person within its jurisdiction the equal protection of the laws.

THE CIVIL RIGHTS ACTS,42 U.S.C. 1981 § 1981 Equal Rights Under The Law. All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contract.

RULES:

Part III. Jurisdiction on
Writ of Certiorari

RULE 10 Considerations Govering
Review On Certiorari

Review on writ of certiorari is not a matter of right , but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons.

SUPREME COURT RULES
PROFESSIONAL CONDUCT

SCR 20:1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall abided by a client,s decision concerning the objective of representation, subject to paragraph (c)(d)(e).

SCR 62.02 Standards

SCR 62.02.(1)(a)(b)(c)(d)(e)(f)(g)(h)

(3)(a)(d).

(1) Judges,Court Commissioner,Lawyers, clerks and court personal shall at all time do all of the following: 1

All reference to SCR are 2004 version.

STATUES OF WISCONSIN

802.05.SINGING OF PLEADING,MOTIONS

AND OTHER PAPERS;SANCTIONS

§802.05. (1)(a)(b)

(1)(a) Every pleading,motion or other paper of a party represented by an attorney shall contain the name and address of the attorney and the name of the attorney,s law firm,if any,and shall be subscribed with the hand

802.10 Calendar practice

802.10 (3)(a)(b)C)(d)(e)(g)(7)

(3)**Scheduling and planning.**Except in categories of actions and special proceedings exempted under sub.(1).

804.12 Failure to make discovery;Sanctions

804.12 (1)(2)(a).

(1) **Motion for order compelling discovery.**A party,upon reasonable notice to other parties and all persons affected thereby,may apply for an order compelling discovery as follows:

805.01 Jury trial of right

805.01 (1)(2)

(1) Right preserved.the right of trial by jury as declared in article I,section 5 ,of the constitution or as given by a statue and the right of trial by the court shall be preserved to the parties inviolate.

805.03 Failure to prosecute or comply with procedure statues

805.03.

For failure of any claimant to prosecute or for failure of any party to comply with the statues governing procedure in civil actions or to obey any order of court.

806.06. Rendition,perfection and entry of judgment

806.06 (1)(a)(b)(2)(4)(5)

(1)(a) A judgement is rendered by the court when it is signed by the judge or by the clerk at the judge,s written direction.

813.01. Order substituted for injunction

813.01

The writ of injunction is abolished. An injunction may be the final judgement in the action or may be allowed as a provisional remedy therein.

813.02.Temporary injunction;When granted

813.02(1)(a)

(1)(a) When it appears from a party,s pleading that the party is entitle to judgement and any part thereof consists in retraning some act.the commission or continuance of which during the litigation it would injure the party.

STATEMENT OF THE CASE

Ira R.Banks is the petitioner herein, The Chase Manhattan Banks is the respondent, BNC Mortgage,Inc P.O.Box 11959 Santa Ana California 922711-1959 is the lender on a loan real estate mortgage home belonging to petitioner located in milwaukee,WI.Fairbanks Capitol Corp.and Fairbanks Capital Holding Corp., defendants,is the defendants the federal trade commissionffile it,s class action suit against im U.S.District Court For The

District Of Massachusetts ,And petitioner Ira R.Banks is a member of that Class Action,All Rights both state and federal are preserved. On may 14,2003,The Chase Manhattan Bank,as trustee of IMC Home Equity Loan Trust 1997-4 under the pooling and servicing agreement dated as of August 1,1997 C/O Fairbank Capital Corp.One Contipark,338 South Warnminster Road Hatboro,PA 10904. file a law suit in The State Of Wisconsin Milwaukee County circuit Court Case No.03-CV-004400,judge Mel Flanagan presiding in this case an reference case of Ira R.Banks as plaintiff in a separate injury case file prior to The Chase Manhattan case,respondent complaint is located at(Petitioner 1st brief appendix,exhibit # 1,appeal case no.04-0867) Then refer to appendix # 2 title defendant motion for injunction order.Case no.04-0867. dated 6-11-03.record entries.

The respondent-The Chase Manhattan Bank case, alleged petitioner-Ira R.Banks fail to make contractual payment.an now Ira R.Banks is in default. These claims are disputed by the petitioner.Their are multiply dollar amount at issue,The appeal admit their are truth-in-lending statements(2) on record ,then the three panel omitted federal truth-in-lending 15 USCS 1601, an The Fair Debt Collection Practices Act (15 U.S.C.Section 1692).See court of appies order paragraph 13 (appendix B here with this petition at page 13-14,case no.04-0867 dated November 9,2004 order page 7.,the court of appeals omitted wis.§806.06 procedure requirement,Record tampering by clerk,s (Refer to this petition appendix D).

Their are several different businesses involved in this matter ,reference not only in respondent Caption heading of it,s own summons an complaint but, the mortgage instrument

as well as other documents on records in this matter.Refer to petitioner appeal case no.04-0867 appendix at exhibit 1,8,9, 10,11, but not limited there to.

Federal Statues

15 USCS §1692e False or Misleading Representations

§1692e (1)(2)(A)(B)

Under the above reference law,milwaukee County Circuit Court,An State Of Wisconsin Court of Appeals District 1, panel of three affirmed lower circuit court decision, order(petitioner appendix B 1-25 dated Nov. 9,2004,case no.04-0867),Ira R.Banks-petitioner file a petition for review with the state of wisconsin Supreme Court,Request denied on january 11,2005(refer here with this petition appendix A ,1-2 ,case no.04-0867 dated Jan.11 ,2005.An now petitioner constitution rights

Civil Rights,SCR Rules,Sanctions powers in the lower court selective used against the petitioner but, Sanctions not used against plaintiff-The Chase Manhattan Bank,A motion file by petitioner for injunction was denied, given the fact the trial judge had address petitioner case prior to The Chase Manhattan Bank,and the court judge had the bases for the injunction in it,s possession remanded by that court,The respondent motion and motion foreclosure Summary judgement is un signed by the lower court under wis. §806.06. Their motion was tampered (deceit)is mute. These issues was properly presented to the wisconsin courts whereas,the court ignored issues.See Parham v.Cortese, 407 U.S. 67 , S.Ct.1983,1994 ,32 L.Ed 2d 556, City of Milwaukee v.Blondis ,157 wis. 2d 730, In re Cherokee Park Plat,113 wis. 2d 112, petitioner-Ira R.Banks Inform the appeals

court of the class action suit.(case no. 04-0867 appeal exhibit 26).

SUMMARY OF ARGUMENT

The intervening cause of new evidence,sequence of events,The results produce have jeopardize this party an others rights, liberty,life, property,due process,equal protection of law in endangered every United States Citizens, the intent of Fair Debt Collection Practices Act §1692, 15 USCS 1601. According to the context in which the federal statues is used,The wisconsin appeals court passes it,s duty imposed by law. The contract creates as many different obligation as there are different objects. (a) The Contract on it,s face obligation is for both parties, foreclosure begin with 30 days, It states nothing about The Chase Manhattan Bank. meaning, document party of interest.See petitioner appeal appendix 10(appeals Case No.04-0867.) (b)Wis. appeals admist there are different amounts.

REASONS FOR GRANTING WRIT

1. PETITION;S PETITION FOR WRIT OF CERTIORARI CONSTITUTIONAL LAW PRESENTS IMPORTANT ELEMENTS OF THE CONSTITUTION PROTECTION AND RIGHTS AFFORDED ALL U.S.CITIZENS THIS COURT HOLD THE POWER TO ENFORCE

Calling attention to the petitioner,s above Jurisdiction Statement, invoking the United States Constitution Federal Statues 15 U.S.C.§ 45 Commerce And Trade,15 U.S.C.S § 1601,The Fair Debt Collection Practices Act § 1692 is constitutional law.The Class action Civil action No.03-10895-DPW file by the federal trade Commission against the plaintiff in this matter ,(class action suit petitioner reply brief,appendix exhibti 26 appeal case No.04-0867) this matter is not limited to petitioner Ira R.Banks rights constitutional.Consumer Credit Protection Act are requirements of Chase manhattan Bank -respondent ,The State of Wisconsin Court,s

Petitioner reliance on case cited City of Milwaukee v.Blondis,157 wis. 2d 730,this case went before Wisconsin appeals Judge **FINE** J. In 1990,No.89-1720 case.Determined in the Supreme Court of Wisconsin.Judge **FINE** J. is one of the three panel judicial appeal judges in this case of the petitioner Ira R.Banks case No.04-0867,There is no dispute Judge **FINE J. decision in this case is misplaced.** See Anderson v. Circuit Court for Milwaukee County,219 wis.2d 1,Wis .Supreme Court.Adams Et Al v. Robertson Et Al,No.95-1873,Cite as 520 U.S. 83 (1997), ost v. Collection Bur.,Inc, Nos. A1-79-108,A1-79-115, A1-79-123-A1-79-131 and A1-79-197.Cite as 493 F. Supp.701(1980). Their is a conflicting errs between State an Federal Law. This review is warranted based on petitioner,s rights that wis.courts undertake a different in reaching their nun-uniform results.

Each relevant issue raise before this United States Supreme Court was raised by petitioner Ira R.Banks in the lower wisconsin courts. This request for review are on United States Constitutional rights,Due Process,Equal Protection and Civil Rights Grounds.

2. PETITIONER SEEK REVIEW OF LOWER WISCONSIN APPEALS COURT VIEW OF IT,S ORDER PARAGRAPH 1-27

it is the position of petitioner,s Ira R.Banks The State of wisconsn Courts. have selective used it,s power to sanction,apply rights where nun exist for the Chase Manhattan Banks,and it,s lawyers,making a mockery of constitutional rights,This is the only court remaining with the power to enforce. The Specified circumstances relevant to the class action suit.AN Respondent-The Chase Manhattan Bank liability in all matters.

3. PETITIONER SEEK REVIEW OF THE STATE OF WISCONSIN DECISION OF THE CHASE MANHATTAN BANK REPREENTATIVES JAY J. PITNER AND MICHAEL M.RILEY FAILURE TO COMPLY WITH SCR 20:1.2, SCR 62.02 STANDARDS,AN DISCOVERY ORDER, CLERK,S TAMPERING WITH RECORD,S

In this case petitioner Ira R.Banks ask this supreme court to be heard on appendix (b) here in this petition appendix (c)State of wis.circuit court scheduling order dated 7/11/03 Record entries 7/11/03.Case No.03-CV-004400,Appeals record entries 8-2.Case No.04-0867.) Appendic D record entries on appeal 18-2.Case No.04-0867.

CONCLUSION

This case is a Summary Judgement order, Under the fourteenth Amendment ,an Civil Rights .In the absent of official reports. This Supreme Court have the power to reverse. Ira R.Banks request this court grant his petition Dated: 14 This day of June 2005

Ira R.Banks
6507 N.84th St.
Milwaukee,WI 53224

INDEX OF APPENDICES

APPENDIX .A.....WISCONSIN SUPREME
COURT ORDER
Case No.04-0867
Dated January 11,2005

APPENDIX .B.....STATE OF WISCONSIN
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DISTRICT 1,DECISION
Dated November 9,2004,
To Lower Court of Wis.
Case No.03-CV-004400

APPENDIX .C.....STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE , COUNTY
CIVIL DIVISION
SCHEDULING ORDER
Case No.03-CV-004400
Court Record dated

APPENDIX .D.....STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY
The Chase Manhattan
Bank-Respondent Notice
of motion for summary
judgement,Court record
Dated Nov.17,2003
Case No.03-CV-004400,
Record on appeal Case
No.04-0867 No.18-2.

OFFICE OF THE CLERK
SUPREME COURT OF WISCONSIN
110 EAST MAIN STREET, SUIT 215
P.O.BOX 1688
MADISON, WI 53701-1688
TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
WEB SITE: WWW.WICOURTS.GOV

January 11,2005

TO:
Hon. Mel Flanagan
Milwaukee County Circuit Court
901 N. 9th Street
Milwaukee,WI 53233

John Barrett
Milwaukee County Clerk of Courts
901 N. 9th Street, Room G-8
Milwaukee, WI 53233

1

APPENDIX (A) WISCONSIN SUPREME COURT
ORDER,
Dated January 11,2005
Case No.04-0867

Ira Banks
6507 No.84th Street
Milwaukee,WI 53224

Michael M.Riley
Jay J.Pitner
Gray & End,L.L.P.
600 N.Broadway,Ste,300
Milwaukee,WI 53202-5099

You are hereby notified that the Court has entered the following order:

No.04-0867

Chase Manhattan Bank v.Banks
L.C. #03CV4400

A Petition for review pursuant to wis. § 808.10 hacing been filed on behalf of defendant-appellant-petitioner,Ira R. Banks,and considered by this court;

IT IS ORDERED that the petition for review is denied,With $50 cost.

Cornelia G.Clerk
Clerk of Supreme Court

APPENDIX (A)
WISCONSIN SUPREME COURT COURT ORDER
Dated January 11,2005
Case No.04-0867

COURT OF APPEALS DECISION DATED AND FILE

NOVEMBER 9,2004

Cornelia G. Clark

Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See Wis.Stat §808.10 and Rule 809.62.

APPEAL No.04-0867 STATE OF WISCONSIN

Cir.Ct.No.03CV004400

IN COURT OF APPEALS DISTRICT I

Chase Manhattan Bank,
Plaintiff-Respondent,

v.

Ira R.Banks,
Defendant-Appellant

APPENDIX B WIS.CT OF APPEALS ORDER
Dated 11/9/04 Case No.04-0867

APPEAL FROM A JUDGEMENT OF THE CIRCUIT COURT FOR MILWAUKEE COUNTY: **MEL FLANAGAN**, Judge, AFFIRMED.

Before Wedemeyer,P.J.,Fine and Kessler,JJ.

¶1 **PER CURM**.Ira R.Banks,Pro se appeals from a grant of summary judgement resulting in a real estate foreclosure judgement against him in favor of Chase Manhattan Bank (Chase Manhattan).He raises what we surmise to be seven claims of error.(1) THE trial court did not have **Jurisdiction** over the parties; (2) Chase Manhattan was **Not a Real Party of interest**: (3) The trial court violated his **Rights to equal protection by its selective use of its sancttion powers** Under Wis.Stat. §§ 802.10(3) & (7),802.05 and 804.12 (2001 -02):[1](4) THE TRIAL COURT VIOLATED HIS DUE PROCESS RIGHTS when it permitted a motion for summary judgement to be heard before the deadline set in the scheduling order of discovery;

APPENDIX B WIS. COURT OF APPEALS ORDER
Dated 11/9/04 Case No.04-0867

(5) The trial court erred in granting summary judgement to Chase Manhattan ; (6) The actions of the trail court in denying his motion for an injunction deprived him of his Fourteenth Amendment right to equal protection and rights afforded him under the Civil Rights Act 42 U.S.C.§1981; and (7) The trial court erred in failing to conclude that Chase Manhattan,s attorneys did not comply with SCR 20:1.2 (2001) and SCR 62.02 (2002). Because there are no reasonable grounds to conclude that the trial court erred,WE AFFIRM.

BACKGROUND

¶2 On February 24,1997,Banks refinanced a home mortgage with BNC Mortgage,Inc, His home was located at 6507 North 84th Street, Milwaukee,Wisconsin.The note and mortgage Banks executed was for the sum of $42.000. Subsequently,the note and mortgage was assigned to Chase Manhattan, as Trustee of IMC

APPENDIX B WIS. COURT OF APPEALS ORDER
Dated 11/9/04,Case No.04-0867

Banks challenges the propriety of the summary judgement for seven reasons.Before addressing his specific claims of error, we first set forth the well-recognized standards for review of a summary judgement.

¶5 We review orders for summary judgement independently,employing the same methodology as the trial court.**Green Spring Farms v.Kersten** ,136 Wis.2d 304,315,401 N.W. 2d 816 (1987).We do value any analysis that the trial court has placed in the record. We shall affirm the trial court,s decision granting summary judgement if the record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law. Wis. Stat. §802.08(2).

¶6 Summary judgement is appropriate when "the pleadings,depositions, answers to interrogatories,and admission on file,together

with the affidavits,if any,show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law." Wis Stat . §820.08 (2).Courts examine judgement motions by using a three-step process. See **Grams v. Boss**, 97 Wis. 2d 332,338,294 N.W.2d 473 . (1980).

¶7 First, it must be determined that the pleadings set forth a claim for relief as well as a material issue of fact.Id. Second, the court must determine whether the moving party,s affidavit and other proofs present a prima facie case for summary judgement by showing a defense that defeat the claim. **Preloznik v. City of Madison**, 113 Wis. 2d 112,116,334 N.W. 2d 580 (Ct.App.1983) .

APPENDIX B
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Dated November 9,2004
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Finally, the Court examines the affidavits and proofs of the opposing party determine whether any disputed material facts exist, or whether any undisputed material facts are sufficient to allow for reasonable alternatives. **Grams**, 97 Wis. 2d at 338. The court proceeds to each succeeding step only if it determines that the appropriate party has satisfied the preceding one.

¶8 The mere allegation of a factual dispute will not defeat an otherwise pro - perly supported motion for summary judgement. **Kenefick v. Hitchock**, 187 Wis.2d 218,224,522 N.W. 2d 261 (Ct.App.1994). One purpose of summary judgement is to avoid a trial where no genuine issues of material fact exist - leaving nothing to try.**Rollins Burdick Hunter of Wis.,Inc Hamilton**,101 Wis.2d 460,470,304, N.W. 2d 752 (1981).

¶9 Summary judgement is appropriate when sufficient time for discovery has passed and the party asserting a claim on which it bears the burden of proof at trial has failed to demonstrate the existence of an element essential to that party,s case. **Transportation Ins. Co., Inc., v. Hunzingher Constr. Co.**,179 Wis. 2d 281,291-92,507 N.W.2d 136 (Ct.App.1993)(following **Celotex Corp. v. Catrett**, 477 U.S. 317,322 (1986).The party moving for summary judgement must explain the basis for its motion and identify those submissions and pleading demonstrating the absence of a genuine issue of material fact. **Transportation Ins. Co., Inc.**, 179 Wis.2d at 292. If the non-moving party has failed to produce any evidence of an essential fact, it is not necessary for the moving party to

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produce affidavits or other submissions that specifically negate the opponent,s claim.Id. A non-moving party may not rest upon the mere allegation of its pleadings,but must come forward with evidence supporting those allegations .Wis.Stat. §802.08 (3).

A Jurisdiction and Standing.

¶10 Banks' first two claims of error embody challenges to the court,s jurisdiction over the parties to the action and whether Chase Manhattan is a real party of interest in this foreclosure action.Because these two claims of error can be addressed and resolved by application of the same rubrics of review,we shall examine them together.

¶11 It is not precisely clear what type of jurisdiction Banks claims is lacking:subject matter jurisdiction,these absence of competency to entertain the foreclosure action,

or personal jurisdiction.Regardless, we comment briefly on each alternative.Since article VII,section 8 of the Wisconsin Constitution provides that "except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters Civil and criminal within this state," There is no doubt that the trial court had subject matter jurisdiction to hear this matter. As for the lack of competency, its absence can be triggered by defects in statutory procedure .Here,there is no claim that a defect in statutory procedure occurred.What remeins then for our consideration is the possible absence of personal jurisdiction.

¶12 Whether a court has personal jurisdiction is a question of law which we review independently. **Marsh v. Fram Bureau Mut.Ins. Co.**, 179 Wis. 2d 42,52,505 N.W.2d 162(Ct.App. 1993) .

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> [A]defendant to a claim for relief may move to dismiss it on the ground of lack of jurisdiction over the person or the property.Once raised by motion or defensive pleading the issue of lack of jurisdiction of the person or property must be heard and determined by the court without a jury in advance of any issue going to the merits. This defense is waived only if a party. make no motion prior to pleading and fails to include the defense in his or her responsive pleading or in any amendment to the pleading permitted to be made as of course.

Callaghan,s Wis.P1 & Pr,vol.4,§22.29 (3d ed. 2000)(footnotes omitted);See also Wis. Stat,§§801.08(1),802.06(8)(a). Similarly, when examining the issue of whether a cause of action has been filed by a real party in interest.

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> An objection that the action is not brought by the real party in interest is made by motion to dismiss the complaint for failure to state a claim,by affirmative allegations in responsive pleading or otherwise by motion within the time set by scheduling order.Otherwise the objection will be considered waived.

Callaghan,s Wis.Pl & Pr,vol.2,§13.09 (4th ed. 1996)(footnotes omitted): see also Wis. Stat. §§802.02(3), 802.06(2)(a)(6), 802.06 (8)(b); **Caley v. Flegenheimer**, 8 **Wis.** 2d 72 ,88,89 N.W.2d 473 (1959).

¶13 Banks did not file motions to dismiss for lack of jurisdiction or for failure to state a claim base on the absence of a real party in interest.

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Nor were there any affirmative allegations made to achieve the same purposes.Furthermore, in Banks, affidavit and memorandum filed for the purpose of defeating the summary judgement motion, the only defense material submitted was the claim that the federal-truth-in-lending and fair debt collection provisions were violated along with Wis.State §779.06(2).

¶14 Finally, both of these claims are being raised for the first time on appeal.We may decline to review issued raised for the first time on appeal.**Allen v. Allen**,78 Wis. 2d 263, 270-71. From this discussion,we conclude that both issues have been waived:consequently, we shall not address them.

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B. Equal Protection Violation.

¶15 Banks,third claim of trial court error involves the selective application of a trial court,s sanctioning and calendaring authority under WIS. STAT.§§804.12, 802.05 and 802.10(3) & (7).

¶16 WISCONSIN STAT.804.12 authorizes trial courts to impose sanctions for failure to meet discovery requests. Banks contends that the trial court selectively imposed sanctions against him and not against Chase Manhattan. We are not persuaded for two reasons.First,Banks never made a discovery request of Chase Manhattan. Second ,after Banks failed to supply the discovery request by Chase Manhattan, The trial Court imposed,but stayed $100 in cost if Banks did not provide an answer to the request for mortgage payment receipts by September 9,2003.

Banks complied with the court,s order on September 6,2003.Thus,a sanction for non-compliance was never imposed.For these reasons,this claim of error fails.

¶17 The second part of Banks, claim of the misapplication of the trial court,s sanction power relates to WIS STAT.§ 802.05 ,Wisconsin,s counterpart to Federal Rule of Civil Procedure 11.Banks has not developed any argument to support this claim. Therefore,we eschew any consideration of this claim of error.**Reiman Assocs.,Inc. v. R/A Adver., Inc.**, 102 Wis. 2d 305,306 n.1, 306 N.W.2d 929 (Ct. App.1981).

¶18 Banks also claims an equal protection violation relating to the trial court,s scheduling power under Wis.Stat.§802.10(3) &(7).

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Dtaed November 9,2004
Case No.04-0867

we are not persuaded.First Banks makes no effort whatsoever to develop his argument. As a consequence , We are not obliged to entertain his contertain his contention. **Reiman Assocs., Inc.**,102 Wis. 2d at 306 n.1 Second, our review of the record demonstrates that Banks attended the pretrial scheduling conference,Participated in the discussion,and agreed to all of the dates set forth in the order.He cannot now claim foul. We reject this claim.

C. Procedural Due Process.

¶19 Next,Banks claims the trial court deprived him of his right to procedural due process by conducting a summary judgement motion on January 5,2004. He argues that entertaining the motion on January 5, 2004, violated the pretrial scheduling order,which set February 1, 2004,as the deadline for discovery.Banks is mistaken in his claim.

¶20 The trial court,s scheduling order was dated July 11,2003.It required that all dispositive pretrial motions be filed on or before December 1, 2003.Chase Manhattan,s fully complied with the deadline date for filing pretrial motions.Banks confuses the filing deadline date with the discovery deadline date. From the date of the scheduling order to the date of the summary judgment hearing, Banks made no discovery demands upon Chase Manhattan.Additionally, at the hearing,Banks made no request to adjourn the summary judgement hearing so that he could conduct discovery. We are unale to find any legal support for Banks, Position that the summary judgement motion should not have been conducted prior to the discovery cut-off date. In fact and in law,Bankss abandoned any rights he may have had under the pretrial scheduling order.

APPENDIX B WIS.COURT OF APPEALS ORDER
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D. Propriety of Summary Judgement.

¶21 Banks claims the trial court erred in granting the motion for summary judgement because there were disputed issues of material facts. Pursuant to Wis.Stat.§802.08(3),our summary judgement statue:

> When a motion for summary judgement is made and supported as provided in this section,an adverse party may not rest upon the mere allegations or denials of the pleading but the adverse party,s response,by affidavits or as otherwise provided in this section,must set forth specific facts showing that there is a genuine issue for trial.

Thus,unless Banks submitted an affidavit which sets forth specific facts showing that there are genuine issues of material facts,courts should enter summary judgement.

¶22 Our search of the record reveals that the basis for Chase Manhattan,s foreclosure action was banks,failure to make monthly mortgage payments due on or after February 1,2003.Banks filed a timely answer.On july 11,2003, the trial court held a scheduling conference. Banks was present. He did not object to any of the deadlines that were ordered. Previously, on July 23,2003,Chase Manhattan made a discovery demand upon Banks for copies of all mortgage installment payments from January 2003,[2] to the date discovery was requested. When Banks did not respond, Chase Manhattan filed a motion to comple.On September 2, 2003,the trial court held a hearing on the motion. It ordered Banks, under the threat of sanction ,to comply with the discovery request by September 9,2003.On September 6,

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Dated November 9,2004 ,Case No.04-0867

2003,On September 6,2003,Banks responded that he did not have any mortgage payment receipts that were requested. On November 17,2003, Chase Manhattan filed a motion for summary judgement. Banks filed a memorandum and affidavit in response.

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[2]Although the demand refers to the year 2002,it appears from other documents and the context of the record that the date ought to have been 2003.

Note:foot note.

¶23 Chase Manhattan motion contained two affidavits:one from Michael Riley, Its counsel,and one from joy Brodowsky Lines. Lines avers that she is employed by the Fairbanks Capital Corp., loan-servicing agent for Chase Manhattan. In that capacity,she has possession,control and

responsibility for the accounting records and loan documents relating to the mortgage loan made by **BNC Mortgage,Inc.**,Attached to her affidavit,were the regularly maintained payment records for Banks, loan account.

¶24 Banks submitted no averments challenging the content of Lines, Affidavit, Nor disputing his failure to make timely mortgage payments.He did, however,raise questions about a violation of Wis.Stat.§779.06 (2).and the application of 15 U.S.C § 1635. The trial court concluded that Banks, truth -in-lending defense under the former statue and fair debt collection defenses under the latter statute were without merit.It further concluded that § 779.06(2) does not apply since this was not a construction loan dispute and that any right to rescind pursuant to §1635 had been waived or

APPENDIX B
WISCONSIN COURT OF APPEALS ORDER
Dated November 9,2004 ,Case No.04-0867

abandoned due to the expiration of the three -day notification rule. From our review, the trial court did not err.

¶25 Thus,the only issue left for examination is whether Banks defaulted in his mortgage loan payments. No evidence was submitted to demonstrate that this material issue of fact was in dispute.Thus,the trial court did not err in granting the summary judgement for foreclosure.

E. Equal Protection and Civil Rights Violations.

¶26 The next discernible claim of error asserted by Banks is the contention that he was deprived of his right to equal protection provided by the Fourteenth Amendment and rights afforded him under the Civil Rights Acts,42 U.S.C. §1981.

APPENDIX B
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Because the trial court failed to grant his request for an injunction. As best as we can ascertain from the motion for an injunction, Banks filed two other actions in circuit court relating ostensibly to this " Same contract " However, an examination of the motion document does not reveal any additional helpful information to determine what the " Same Contract " is or how it affects this foreclosure action. There is no other document or entry in the court record relating to this motion. In the absence of any source of illumination we deem the motion abandoned. **Dumas v. State**,90 Wis. 2d 518, 523 280 N.W. 2d 310 (Ct. App. 1979)(constitutional issues argued but not adequately briefed will not be considered): **State v. Shaffer**, 96 Wis. 2d 531,545-46,292 N.W. 2d 370 (Ct. App. 1980).(arguments without adequate citations to legal authority will not be considered) .

F. Violation of Supreme Court Rules.

¶27 Lastly, Banks claims that Chase Manhattan,s attorneys failed to comply with SCR 20:1.2 and SCR 62.02 by violating the federal truth-in-lending law, the Fair Debt Collection Practices Acts,and in filing the motion for summary judgement before the expiration of the time allotted for discovery as set forth in the pretrial scheduling order. Because we have already concluded that no valid defense were raised to defeat the motion and order for summary judgement, we further concluded that there were no violations SCR 20:1.2 or SCR 62.02. Banks has failed to produce any evidence supporting his claim that these rules were violated. According,his claim fails.

By the Court—— Judgement affirmed.

This opinion will not be published,See Wis Stat Rule 809.23 (1)(b)5.

STATE OF WISCONSIN

CIRCUIT COURT MILWAUKEE COUNTY

Chase Manhattan Bank
Plaintiff(s),

CIVIL DIVISION
SCHEDULING ORDER

Ira Banks
Defendant(s),

CASE # 03-CV-004400

Pursuant to §802.10(3)& 802.11 Wis.Stats. and on the Court,s own motion,IT IS HEREBY ORDERED :

1. The naming of additional parties and any amendment to the pleadings shall be completed on or before 9/1/03 .A copy of this order shall be served with a copy of the complaint on any additional party.

2.Counsel shall provide in writing to opposing counsel:(a)the name and address of lay witnesses(With a brief statement as to their testimony);(b) The names,addresses,and resumes together with written report for each expert named;[Failure to provide a permanency

report from a witness shall preclude that witness from expressing an opinion regarding permanency,except for good cause.]and (c) an itemized statement of damages claimed,including any special damage claims and permanency, on of before 11/1/01 by plaintiff 12/1/03 by defendant____by third party **Witnesses not timely named and described shall not be called as witnesses at trial, except for good cause shown.**

3. All dispositive pretrial motions shall be filed on or before 12/1/03 and shall be accompained by affidavits and/or legal memoranda in compliance with **Local Rule # 364 & 366.** Any other pretrial motion as to which the movant can reasonably expect an opposing party to have a differing view must also be supported by a memorandum of law with the authorities on which the movant relies , along with brief statement of the facts, in compliance with **Local Rule #365 & 366.**

4. All discovery(except deposition for use at trial) Shall be completed by 2/1/04 **Any motion to compel discovery not accompanied by the statement required by Local Rule # 343 shall not be heard.**

5. ADR: [] A.on or before____the parties shall discuss the advisability of ADR and if the parties agree on a method,the plaintiff shall so advise the court in writing.If the parties do not agree,each party must file a letter stating a position on ADR,Including any reasons why ADR is not appropriate .Upon receipt of said information, the court will order the ADR Method agreed upon; If no agreement is reached, the court may order an ADR Method (§802.12) OR [] B.Pursuant to §802.12,Wis Stat,the parties shall complete mediation no later than___with a mediator agreed to by the parties, Or_____

APPENDIX C STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY,SCHEDULING ORDER FOR DISCOVERY,Cir.Ct Case No.03CV4400, Appeal#04-0867

shall serve as mediator.The parties shall share equally the cost of the service provider,s fee.The parties and their attorneys shall be present and participate in person in mediation .Each corporate party or other legal entity which is a party shall appear by an individual **Other than the attorney** , which individual shall have full authority to negotiate in this matter,unless the parties and the mediator agree otherwise **Full authority** means that the person has the authority to modify any previous offers and present new offers to settle and to approve any final settlement,without the need to call or speak with any other representative of that party. in the event either party fails to appear or appears at the mediation without full authority to negotiate a resolution

APPENDIX C STATE OF WISCONSIN CIRCUIT COURT
MILWAUKEE COUNTY, SCHEDULING
ORDER FOR DISCOVERY,Case No04-0867

the party so responsible may be ordered to pay ALL cost of the mediation and be subject to further sanctions determined by the court.

6. A pretrial conference is set on 3/2/04 at 9:15 .Counsel who will actually try the case must be present.The client must also appear unless counsel has full authority to act or the client is readily available by phone.

7. pretrial Report: On or before 10 days Min each party shall prepare and file with the court a pretrail report.The report must be sign by the attorney who will try the case (or a party personally), If not represented by counsel) .

The pretrial Report must include the following

A. A detailed summary of facts of the case, issues and theories of liability or defense and evidentiary issues. The summary should not be longer than two pages.

B. The identification of each trial witness and a specific summary(not exceeding one page per witness) of the testimony of each witness(lay and expert).

C. A list of exhibits to be offered at trial Plaintiff shall designate its exhibits using numbers # 1-100; Defendant shall use the numbers # 101-200. The Exhibits shall be mark and made available for inspection upon the request of any other party as of the filing of the Exhibit List.Exhibits not timely listed and made available for inspection shall not be used at trial,except for good cause shown.

D. A designation of all depositions or portions to be read into the record at trial as substantive evidence.

APPENDIX C, CIVIL DIVISION SCHEDULING ORDER Case No.03-CV-004400,Record date entries 7/11/03,Appeal No.04-0867

E. **Jury trial**-If a jury trial has been requested;

1. all proposed jury instructions [numbers and titles only,unless requesting modified or special instructions]

2. Proposed verdict form

3. All motions in limine

F. Court trial-If a court trial has been requested,proposed Finding of Facts and Conclusions of Law.

G. In addition to completing a report, counsel are expected to confer and make good faith effort to settle the case. Counsel are also expected to arrive at stipulations that will save time during the trial.**Sanctions**,Which may include the dismissal of claims and defenses or imposition of costs,May be imposed if a **Pretrial report** is not filed.

8. The parties shall comply with SCR 62.02, **The Standards of Professional Responsibility ,Courtesy and Decorum.**

9. Jury fees must be paid in accordance with **Local Rule # 371 on or before** ___or the jury shall be deemed waived.Trial shall be scheduled at the pretrail conference.

10. NO STIPULATION TO AN EXTENSION OF TIME LIMITS IN THIS ORDER WILL BE PERMITTED WITHOUT CONSENT OF THE COURT.

11. OTHER ORDERS:

Failure to comply with the terms of this order shall be considered cause for imposing sanctions which may include the dismissal of claims and defenses. See §804.12 and 805.03 wis.Stats.

Dated 7/11/03 BY THE COURT

Michael M.Riley

Ira Banks

Mel Flanagan
Circuit Judge
Branch 4

APPENDIX C, STATE OF WISCONSIN CIRCUIT COURT APP.04-0867,SCHEDULING ORDER FOR DISCOVERY

STATE OF WISCONSIN

CIRCUIT COURT MILWAUKEE COUNTY

The Chase Manhattan Bank,as trustee on IMC Home Equity Loan Trust 1997-4 Under the pooling and servicing agreement dated as of August 1,1997,

Plaintiff,

v. **NOTICE OF MOTION**

Ira R.Banks, **AND MOTION**

Defendants.

Case No.03-CV-004400

Filed Civil Division ,Dated Nov.17,2003

PLEASE TAKE NOTICE That on 5 day of January 2004 at 10:00 A.M.,or as soon thereafter as counsel can be heard,The plaintiff by its attorneys,GRAY & END, L.L.P.,will apply to that Branch of the Circuit Court for this county,presided over by the Honorable Mel Flanagan in said judge,s courtroom in the Milwaukee County Courthouse,901 N.Ninth Street,Milwaukee,WI 53233,and will move

the Court for an order granting summary judgement in favor of the plaintiff pursuant to sec.802.08, Stats., and for the costs of this motion pursuant to sec.814.07,Stats.

Dated this 13th day on November,2003.

GRAY & END,L.L.P.
Attorneys for the plaintiff

BY: Michael M.Riley
State Bar NO.1033997
P.O.Address:
600 North Broadway
Suite 300
Milwaukee,Wisconsin 53202
(414)224-1214

APPENDIX D

ORDER FOR FORECLOSUE ,NOTICE OF MOTION AND MOTION DRAFTED BY PLAINTIFF ATTORNEYS Michel M.Riley ,GRAY & END Lower Circuit Court Case No.03-CV-004400 Court of appeals record entries 18-2 Case No.04-0867

Supreme Court, U.S.
FILED
JUL 1 9 2005
OFFICE OF THE CLERK

(2)

No. 04-1680

IN THE
Supreme Court of the United States

IRA R. BANKS,

Petitioner,

v.

CHASE MANHATTAN BANK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES P. MULLIGAN
Counsel of Record
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(414) 224-1234

Counsel for Respondent
Chase Manhattan Bank

STATEMENT OF THE CASE

I. NATURE OF THE CASE

On February 24, 1997, the petitioner, Ira R. Banks (hereinafter "Mr. Banks"), executed a note and mortgage to BNC Mortgage, Inc. in the sum of $42,000.00. The note was endorsed and the mortgage was assigned to the respondent, The Chase Manhattan Bank, as Trustee of IMC Home Equity Loan Trust 1997-4 under the pooling and servicing agreement dated as of August 1, 1997 (hereinafter "Chase Manhattan Bank"). On May 14, 2003, Chase Manhattan Bank commenced a foreclosure action against Mr. Banks in the Milwaukee County Circuit Court for the State of Wisconsin. Chase Manhattan Bank's Complaint alleged that Mr. Banks failed to tender monthly mortgage payments as required by the note and mortgage and therefore Chase Manhattan Bank sought to foreclose the mortgage.

II. PROCEDURAL STATUS

Mr. Banks filed an Answer in response to Chase Manhattan Bank's Complaint. On July 11, 2003, the Milwaukee County Circuit Court held a scheduling conference and issued a Scheduling Order.

On November 17, 2003, Chase Manhattan Bank filed a Notice of Motion and Motion for Summary Judgment along with supporting Affidavits, Brief and proposed Order and Judgment of Foreclosure. In opposition to the summary judgment motion, Mr. Banks filed a Memorandum, Affidavit and Response.

The Milwaukee County Circuit Court heard Chase Manhattan Bank's Motion for Summary Judgment on January 5, 2004. The Milwaukee County Circuit Court granted Chase

Manhattan Bank's motion and executed an Order and Judgment of Foreclosure on January 21, 2004. Said Judgment was entered on February 4, 2004. Mr. Banks filed a Notice of Appeal with the Wisconsin Court of Appeals on March 22, 2004.

In response to the appeal, Chase Manhattan Bank filed a Motion for Summary Disposition which was denied by the Wisconsin Court of Appeals. The Wisconsin Court of Appeals affirmed the Milwaukee County Circuit Court's decision on November 9, 2004.

Subsequent to the Wisconsin Court of Appeals affirming the Milwaukee County Circuit Court's decision, Mr. Banks filed a Petition for Review with the Wisconsin Supreme Court. On January 11, 2005, the Wisconsin Supreme Court denied Mr. Banks' Petition for Review. Mr. Banks filed his Writ of Certiorari with the U.S. Supreme Court on February 9, 2005.

ARGUMENT

U.S. Supreme Court Rule 10 provides that "Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." U.S. Supreme Court Rule 10 goes on to outline three different types of cases which the Court often uses its discretion to accept.

In reviewing the Writ of Certiorari Mr. Banks has filed in this particular instance, Mr. Banks' Writ is woefully deficient. Mr. Banks misquotes U.S. Supreme Court Rule 17 in the Statutes and Rules section of his Writ. The rule which Mr. Banks quotes is actually Rule 10, not Rule 17.

Mr. Banks' Writ is not only difficult to read and to comprehend, but it clearly does not provide any compelling reasons why the U.S. Supreme Court should grant his Writ of

Certiorari. Furthermore, Mr. Banks' jurisdictional statement as required by U.S. Supreme Court Rule 14(1)(e) is inadequate.

CONCLUSION

Mr. Banks has had his day in court. The Milwaukee County Circuit Court correctly granted Chase Manhattan Bank's Motion for Summary Judgment and the Wisconsin Court of Appeals affirmed the Milwaukee County Circuit Court's decision (see Banks Appendix B).

Mr. Banks' Writ of Certiorari lacks any substantial compelling reasons and the necessary jurisdictional basis to why the U.S. Supreme Court should accept his Writ.

Based upon the foregoing, Chase Manhattan Bank respectfully submits that the Writ of Certiorari of Ira Banks be denied.

Respectfully submitted,

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Counsel of Record for Chase Manhattan Bank, Respondent

Dated: July 14, 2005.